



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR-5877-F-02]

RIN 2502-AJ33

Manufactured Home Procedural and Enforcement Regulations;

Clarifying the Exemption for Manufacture of Recreational Vehicles

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rulemaking revises the exemption for the manufacture of recreational vehicles to clarify which recreational vehicles qualify for an exemption from HUD's Manufactured Home Construction and Safety Standards and Manufactured Home Procedural and Enforcement regulations. HUD is adopting a recommendation of the Manufactured Housing Consensus Committee (MHCC) but expanding the definition of recreational vehicle and modifying it to require certification with the updated ANSI standard, A119.5–15.

DATES: Effective Date: **[Insert date 60 days from date of publication in the FEDERAL REGISTER].**

Incorporation by Reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[Insert date 60 days from date of publication in the FEDERAL REGISTER].**

Compliance Date: The Manufacturer's Notice requirement under this rule applies to all covered units, beginning with the first unit to leave production on **[Insert date 60 days from date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Teresa Payne, Acting Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9164, Washington, DC 20410; telephone 202-402-5216. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service, toll-free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Regulatory Authority and the Recreational Vehicle Exemption

The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act)¹ authorizes HUD, through its Office of Manufactured Housing Programs (OMHP), to establish and amend the Federal Manufactured Home Construction and Safety Standards (HUD Code) and the Procedural and Enforcement regulations, codified at 24 CFR parts 3280 and 3282, respectively. This authority authorizes HUD to issue and enforce appropriate standards for the construction, design, performance, and installation of manufactured homes—formerly known as mobile homes—to ensure their quality, durability, affordability, and safety.

Since the HUD Code's inception in 1976, Recreational Vehicles (RVs) have been largely exempted from the HUD Code. Self-propelled RVs are statutorily exempted, and other classes of RVs over which HUD maintains statutory jurisdiction have been exempted by regulations codified at 24 CFR 3282.8(g).² Over time, the RV exemption has evolved. Since codifying its regulatory exemption in 1982, HUD has exempted RVs from both HUD's Manufactured Home Construction and Safety Standards at 24 CFR part 3280 and its Manufactured Home Procedural

¹ See The National Manufactured Housing Construction and Safety Standards Act of 1974, Pub. L. 93-383, approved August 22, 1974, codified at 42 U.S.C. 5401-5426.

² See 41 FR 19846 (May 13, 1976).

and Enforcement regulations at 24 CFR part 3282 if they are: built on a single chassis; 400 square feet or less when measured at their largest horizontal projections; self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.³ In 1988, HUD issued an interpretative bulletin to clarify the method for measuring a unit to determine whether an RV qualified under the exemption.⁴ In 1997, HUD also allowed for small lofts to be excluded from the exemption's square footage requirements.⁵

B. The Need for a Broader Exemption

Prior to this rulemaking, the RV exemption was roundly criticized for not drawing a clear enough distinction between RVs, which are designed for temporary, recreational use, and manufactured housing, which is designed for permanent, year-round dwelling. This distinction has become increasingly relevant, because RV manufacturers have begun to produce larger products that include more features, such as porches built on the chassis, and that resemble manufactured homes. These additions have raised questions as to whether these features should be included when measuring according to Interpretive Bulletin A-1-88 for the purposes of exemption. This has increased the confusion over whether HUD should regulate certain RVs because they meet the statutory definition of a manufactured home or whether they should be exempted based on their intended design for temporary, recreational use.⁶ Subsequently, HUD

³ See 47 FR 28091, June 29, 1982, codified at 24 CFR 3282.8(g).

⁴ HUD stated that "measurements shall be taken on the exterior of the home. The square footage includes all siding, corner trim, including storage space, and area enclosed by windows, but not the roofing overhang." *Interpretative Bulletin A-1-88* (Oct. 5, 1988), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=A188.pdf>.

⁵ See Letter from HUD, dated August 1, 1997, available at <https://portal.hud.gov/hudportal/documents/huddoc?id=loftletter.pdf>.

⁶ For example, in November 2012, the Recreation Vehicle Industry Association (RVIA) issued a Standards News Bulletin to its members. Citing past HUD guidance, RVIA announced its position that in measuring the size and calculating the square footage of a Recreation Park Trailer, manufacturers should apply the "shadow rule" to

determined that some manufacturers were producing Park Model Recreational Vehicles (PMRVs, also known as recreational park trailers or RPTs) in excess of the RV exemption's 400-square-foot threshold, which was based on a 1988 HUD Interpretative Bulletin guidance on how to measure a unit. These PMRVs contained screened-in porches built on the chassis and were advertised for all-season use.

To address this issue, HUD issued memoranda in 2014 and 2015, reiterating the method through which RVs should be measured to qualify for the RV exemption.⁷ HUD also questioned whether it should exercise regulatory authority over fifth-wheel travel trailers, some of which, because they exceeded the 320 square foot threshold under the statutory definition of "manufactured home," are subject to HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations. From December 2-4, 2014, the MHCC met and considered HUD's October 1, 2014, memorandum.⁸ After discussion and debate, the MHCC voted to approve a recommendation that HUD adopt language more clearly differentiating RVs from manufactured housing and simplify its RV exemption.⁹

II. HUD's February 9, 2016, Proposed Rule; Expanding the RV Exemption

HUD issued a proposed rule on February 9, 2016, at 81 FR 6806, to revise the definitions of "Manufactured home" at 24 CFR 3280.2 and "Recreational vehicles" at 24 CFR 3282.8(g), to

determine what is included in the measurement, and they should not include in their measurement: roof overhangs, porches, patios, decks, enclosed door entries, or loft areas with a ceiling height of less than 5 feet.

⁷ See HUD, RV Exemption Under Manufactured Housing Act, Parts I and II (Oct. 1, 2014 and Jan. 20, 2015), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=rvmemo12015.pdf>.

⁸ See *The FACTS: HUD's Manufactured Housing Newsletter* (Feb. 2015), available at <https://portal.hud.gov/hudportal/documents/huddoc?id=mhnewsletter11515.pdf>.

⁹ MHCC proposed the following language: "Recreational vehicles are not subject to this part, part 3280. A recreational vehicle is a factory built vehicular structure designed only for recreational use and not as a primary residence or for permanent occupancy, built and certified in accordance with NFPA 1192-2015 or ANSI A119.5-09 consensus standards for recreational vehicles and not certified as a manufactured home." Manufactured Housing Consensus Committee, *MHCC Proposed Changes* (Received as of May 31, 2015), 5-6, available at <https://portal.hud.gov/hudportal/documents/huddoc?id=changes53115.pdf>.

clarify—and effectively expand—the exemption of RVs from the HUD’s Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations. The rule proposed to change the definition of RVs by revising the four-part test used to determine whether a structure qualifies for the RV exemption. Specifically, HUD’s rule proposed a definition focused on whether or not the structure is certified as a manufactured home and whether it is constructed according to two consensus RV standards: the ANSI A119.5 Park Model Recreational Vehicle Standard and the NFPA 1192-15 Standard on Recreational Vehicles.¹⁰ By incorporating by reference the ANSI A119.5 Park Model Recreational Vehicle Standard, HUD’s February 9, 2016, proposed rule would have allowed factory-constructed porches to be added to RPTs/PMRVs in excess of the RV exemption’s 400 square foot threshold.

III. HUD’s January 26, 2018, Document; Regulatory Review of Manufactured Housing Rules

HUD issued a Federal Register document on January 26, 2018, at 83 FR 3635, entitled “Regulatory Review of Manufactured Housing Rules,” to solicit public comment on all of its current and pending manufactured housing regulatory actions. Consistent with Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” and Executive Order 13777, entitled, “Enforcing the Regulatory Reform Agenda,” and as part of the efforts of HUD’s Regulatory Reform Task Force, the document informed the public that HUD was reviewing its existing and planned manufactured housing regulatory actions to assess their actual and potential compliance costs and reduce regulatory burden. HUD invited public comment to assist in identifying regulations that may be outmoded, ineffective or excessively burdensome and should

¹⁰ NFPA 1192-15 is available for review at <http://www.nfpa.org/freeaccess>. ANSI A119.5-15 is available for review at www.rvia.org/?ESID=A119.

be modified, streamlined, replaced or repealed. Of the 156 unique comments that HUD received in response to the document, fewer than 20 referenced the proposed RV rule, and all expressed support for this rulemaking.

This final rule adopts the approach of the proposed rule to reinforce the distinction between manufactured housing, which HUD regulates under its Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations; and other structures, which HUD will exempt from such regulation. The rule takes into consideration the public comments submitted in response to the February 9, 2016, proposed rule and the January 26, 2018, Federal Register document. This final rule provides that the requirements of 24 CFR parts 3280 and 3282 do not apply to the manufacture of a “recreational vehicle” as defined by this rule.

IV. Changes Made at the Final Rule Stage

After considering public comments received on the February 9, 2016, proposed rule, and after further review, HUD makes the following changes at the final rule stage.

1. In the final rule, HUD elects not to revise the definition of “manufactured home,” found at 24 CFR 3280.2, to ensure that the regulatory definition of “manufactured home” tracks with its statutory definition.

2. In § 3282.15(b)(1), HUD removes the term “factory built,” in response to public comment. HUD agrees with commenters who stated that some RV manufacturers do not produce their products in a factory, but nevertheless should qualify for the exemption if they meet all other exemption criteria.

3. In § 3282.15(b)(1), HUD adds the term “vehicle” to the definition of a recreational vehicle in response to public comment. HUD agrees with commenters who stated that “vehicle” is also a term of art used by state and local governments in regulating RVs.

4. In § 3282.15(b)(3), HUD makes a technical correction to remove the term “Recreational Park Trailer Standard” and replace it with the term “Park Model Recreational Vehicle Standard,” in response to public comment and to reflect the standard’s proper title.

5. In § 3282.15(c), HUD makes several changes; to remove the term “Notice” and replace it with the term “Manufacturer’s Notice” for clarity; and to specify that in all cases where the exemption is based on the unit being certified to the ANSI A-119.5-15 standard, the Manufacturer’s Notice must be provided to the consumer prior to the completion of the sales transaction, as defined in this final rule. Finally, HUD adds a definition of “completion of sales transaction” in this final rule, because the cross-reference to § 3282.252(b), in the proposed rule, was inapplicable.

V. Discussion of Public Comments Submitted on the Proposed Rule and HUD’s Responses

The public comment period for the February 9, 2016, proposed rule closed on April 11, 2016. HUD received approximately 5,300 public comments in response to the proposed rule. A wide variety of interested entities submitted comments, including individuals, homeowners’ associations, industry groups, state and local governments, and trade associations. At the outset, HUD notes that an overwhelming majority of these public comments were based on a misunderstanding of the proposed rule’s intent and legal effect. This misunderstanding was propagated by social media, which opined that the rule was intended to increase regulation and restrict or prohibit consumer use of RVs and other types of housing, such as tiny homes. HUD

emphasizes that this rule does not affect the use of RVs by consumers. Rather, this final rule clarifies the exemption for RVs from HUD manufactured housing regulation.

This section of the preamble addresses significant issues raised in the public comments, and organizes them into subject groups, with a description of each group of comments followed by HUD's responses.

A. General Misunderstanding of the Proposed Rule

Comments: Commenters stated that the rule would prohibit full-time RV living. Other commenters stated that the rule implied that HUD would regulate consumer use of RVs. Commenters may have based this conclusion on the proposed definition of "recreational vehicle" that includes a criterion that a RV be designed only for recreational use. The commenters stated that the criterion would deter full-time RV and tiny home living while yielding no safety improvements.

Many commenters stated that individuals have a right to housing choice, including where and how they live, so long as the housing they choose is safe and contains necessities. Some commenters shared current housing trends toward small homes to base their opposition to the rule. Commenters stated that consumers, not HUD, should determine what housing should be acceptable for full-time living. Commenters stated that there is no harm in full-time RV living.

Commenters also stated that many people rely on full-time RV living as an economic necessity, particularly in high-cost areas. Commenters also stated that many people live full-time in RVs, Fifth-Wheel Travel Trailers, or tiny homes, and have been doing so for years, particularly in warm climates.

Some commenters stated that RVs are designed for full-time living and that many RV parks encourage full-time RV living. Commenters also stated that HUD should recognize the

many benefits of full-time RV or tiny home living, including but not necessarily limited to: expanding access to housing or home ownership, especially for people with limited incomes, criminal records, or poor rental histories; homelessness prevention; flexible housing for people who are elderly; ease of evacuation from natural disasters or terrorism; and individual freedom – to live where a person wants, to have pets, to avoid environmental contaminants, to live mortgage-free, to have less to care for, to live frugally, to practice environmental responsibility, or to travel for enjoyment, work, or retirement. Commenters stated that HUD should specifically incorporate language into the rule, stating that full-time living in RVs remains legal. Commenters stated that HUD should not adopt any recommendations from the MHCC, as its agenda is to force people into manufactured homes.

Some commenters stated that because the rule would make it more difficult for full-time RV users to maintain their lifestyle, a host of detrimental secondary effects would result. For example, commenters stated that the rule would worsen homelessness and undermine HUD's mission by limiting the supply of affordable housing in the United States. Commenters stated that this would disproportionately affect, and effectively discriminate against, people who lack financial resources or face economic hardship; e.g., people adapting to worsening economic conditions, people with disabilities, students with significant debt, veterans, senior citizens, and people who must travel for their work (and their employers, including national parks). Commenters stated that this would also disproportionately affect people who live alone and people who want to live frugally or practice environmentally responsible living. Commenters stated that the rule would inhibit people from retiring, reduce people's financial independence, force them into assisted living facilities, and force them to choose between housing and other basic necessities, like food, medicine, and utilities. Commenters stated that the rule would

increase burdens already faced by RV residents, including local restrictions on parking, minimum size requirements, and zoning laws. Commenters stated that in response to the rule, manufacturers will merely adjust the square footage of RVs or change their marketing materials.

Commenters stated that the rule dictates the minimum square footage of a home or requires modular homes to be as stable as foundation-built homes. A commenter stated that HUD should not base its RV exemption on Recreation Vehicle Industry Association (RVIA) certification because doing so would have the effect of excluding most sport utility RV trailers, including toy hauler sport utility RV trailers, RV trailers with garage areas and the large number of RV trailers with generators.

HUD Response: HUD respectfully disagrees with the various fundamental premises and conclusions of these commenters about secondary effects. Initially, as stated in this preamble, HUD is not regulating use of manufactured homes or RVs. More specifically, how individuals decide to use their manufactured home or RV unit after purchase—and, in some cases, after receiving a Manufacturer’s Notice about the unit’s compliance with RV standards—is beyond the scope of this final rule. The regulation of use and occupancy of RVs is the purview of state and local authorities, not HUD.

Because this rule does not prohibit or regulate the use of manufactured homes or RVs, including tiny homes, the secondary consequences described by certain commenters are moot, and HUD does not believe that there exists a need to address them individually. HUD also states that this rule does not dictate the minimum square footage of a home, nor does it require modular homes to be “as stable” as foundation-built homes. It also does not require manufacturers to obtain RVIA certification to claim the RV exemption. HUD reiterates that when it first codified the RV exemption in 1976, it unequivocally stated that RVs were not designed to be used as

permanent dwellings. This final rule does not alter that underlying rationale for the exemption. Moreover, as noted above, both the ANSI and NFPA standard descriptions underscore the need to distinguish RVs from permanent housing.

B. Public Comments in Support of and Against the Rule

1. Comments in Support of the Rule

Comment: Some commenters stated that they agreed with MHCC's recommendations that HUD should not apply HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations to RVs, PMRVs, or Fifth-Wheels, because such structures are vehicles, not manufactured homes, and they are designed and built for temporary recreational or seasonal camping accommodation in accordance with widely accepted national standards. Commenters also stated that HUD has no role regulating vehicles. Some commenters stated that the number of people living full-time in RVs constitute a small minority of RV consumers. Other commenters stated that the rule will positively discourage full-time residential use, protecting consumers and preserving the market for small, single-section manufactured homes.

Some commenters stated that HUD's manufactured home regulations were created to ensure minimum standards of safety, quality, and affordability in housing designed for permanent residential use—while the market also demanded vehicles for recreational and seasonal use—but that both manufactured homes and RVs evolved and grew larger over time, making it more difficult to distinguish them. Several commenters stated that dwellings should be classified based on their design intent—i.e., whether they are for temporary or permanent use—and not on their size. Some commenters stated that those who live full-time in RVs constitute a small minority of all RV consumers.

Commenters also stated that the MHCC's RV definition is appropriate, insofar as it reflects a broad consensus among stakeholders, regulators, and Congress that regulating RVs is outside the scope of HUD's housing mission and is not contemplated by the National Manufactured Housing Construction and Safety Standards Act, and it allows for RVs and manufactured homes to be more easily distinguished. Commenters stated that HUD should not exercise regulatory authority over RVs, because they are already extensively regulated by the U.S. Department of Transportation and state motor vehicle and taxing authorities, and if HUD were to regulate them, it would create conflicts. One commenter stated that the rule will beneficially deter future requests for regulatory exemptions by creating an important regulatory firewall between manufactured housing and RVs. Other commenters stated that the rule serves to eliminate regulatory uncertainty and the likelihood of congressional inquiries, and litigation, by more broadly exempting RVs from HUD's regulations.

HUD Response: As stated in the proposed rule, HUD agrees with the MHCC that the RV exemption should be applied based on the manufacturer's design intent, and certification to a consensus-based RV building standard. HUD notes that because some RVs meet the statutory definition of manufactured home, and would otherwise fall within HUD's regulatory jurisdiction, those units require a regulatory exemption to avoid being covered under the Act and regulations.

Comment: Some commenters stated their support for the Manufacturer's Notice requirement, because it serves to protect consumers from an unregulated class of de facto homes by ensuring consumers do not unintentionally purchase homes that are unsafe for full-time living or that are actually less valuable than their retail price. Commenters also stated that the Manufacturer's Notice provides an objective basis for HUD to enforce its regulations in the event of false certifications or misuse of the RV exemption.

HUD Response: HUD welcomes these perspectives and agrees that the Manufacturer's Notice requirement is an important tool for ensuring that consumers are aware to what standard and purpose the units they are purchasing are built.

2. Comments Against the Rule

Comment: Many commenters stated their general opposition to the rule. One commenter stated that rather than revising its RV exemption, HUD should eliminate it entirely. Some commenters stated that the rule is an example of government overreach, overregulation, or waste of resources. Some expressed confusion regarding what problem the rule addressed. Others stated that the rule was based on opinion, lacked sufficient empirical justification, was disingenuous, was not sufficiently considered, or was unclear.

Many commenters stated that the rule was contrary to law or public policy. Some commenters stated that the rule is unconstitutional, e.g., due to federalism concerns or because it amounts to a regulatory taking. Commenters also stated that the rule exceeds HUD's regulatory authority, because only state or local governments should, and already do, regulate use of RVs. Some commenters also stated that the rule violates the Fair Housing Act. For these reasons, some commenters stated that the rule would lead to litigation or consumer claims against RV manufacturers.

Commenters also stated that the rule is vague, e.g., in terms of what constitutes "seasonal" or "permanent" occupancy, and, because of this, it is unenforceable, and it will require HUD to hire people to enforce it. Commenters stated that it was unclear whether the rule applied only to RVs that are permanently placed in a park or campground, or also to those being used to travel the country. Commenters stated that the rule will lead RV parks to evict residents out of fear of legal consequences. Commenters stated that some RV manufacturers have been

marketing their products for full-time living. One commenter stated that if HUD will not issue a loan to purchase an RV, then it should not be able to regulate RVs. Commenters stated that HUD should exempt from its manufactured housing regulations altogether individuals who build their own tiny homes.

HUD Response: As explained above, this rule does not regulate the use of manufactured homes or RVs but serves to expand the exemption for RVs, and to provide for a clear way of determining whether RVs that meet the statutory definition of a “manufactured home” are exempt from complying with HUD’s Manufactured Home Construction and Safety Standards and Procedural and Enforcement regulations. The rule does not address “seasonal” or “permanent” occupancy or distinguish between RVs that are permanently placed in a park or campground and those being used to travel the country. This rule should not be used by RV parks to evict residents out of fear of legal consequences.

HUD’s regulation applies to the design and manufacture of manufactured homes and by way of this rulemaking allows for exemption for manufacturers of RVs that meet the exemption criteria. HUD’s rule also helps to ensure that consumers are aware of the building standards used to construct the unit and the design purpose of the unit that they purchase. Both reference standards (ANSI A119.5 and NFPA 1192) contain definitions that specify, for both an RV and PMRV, as applicable, that the units are primarily designed to provide temporary living quarters. Both the manufactured housing and RV industries have expressed overwhelming support for this rule.

HUD reiterates that it is issuing this rule well within the bounds of its regulatory authority, and the rule in no way encroaches upon or violates the constitutional rights of individuals, businesses, or states, and nothing in the rule violates any statute, including the Fair

Housing Act. HUD additionally notes that the rule could potentially lessen the likelihood of litigation or consumer claims against RV manufacturers, because the Manufacturer's Notice will provide for greater transparency and consumer awareness before transactions are complete.

Moreover, HUD states that the rule provides clear and commonly-used standards by which RVs must be manufactured in order to qualify for the exemption. Any fears regarding secondary market consequences on consumers, RV parks, or insurance or housing financing are both unfounded and well outside the scope of this rulemaking. HUD again stresses that this rule clarifies the existing RV regulatory exemption and does not affect the aforementioned markets.

Comment: A large number of commenters questioned HUD's intent in proposing this rule. Some commenters stated that it was unclear what problem HUD hopes to address with this change. Some commenters stated that HUD should be required to demonstrate that full-time RV living is harmful. Some commenters stated that HUD wants to limit the number of RV dwellings or keep people from living in RVs full-time, e.g., in order to reform trailer parks. Commenters stated that HUD wants to incentivize people to live in public housing or other types of housing to allow the government or industry to profit off poor or elderly people and others. Commenters suggested that the rule might be the result of lobbying by one or more industries that HUD improperly favors, e.g., the mortgage or lending industry, home builders, the manufactured home industry, the RV industry, mobile home manufacturers, PMRV manufacturers, or realtors. Commenters stated that the rule is HUD's attempt to penalize people who pay lower or no property taxes.

HUD Response: As HUD explained in the proposed rule, this rule is appropriate, because exempting RVs from manufactured housing regulations remains sound policy, and clearer standards are needed to further that goal. The rule better differentiates RVs from

manufactured homes to ensure that HUD does not unnecessarily regulate RVs. HUD received feedback from the manufactured housing and recreational vehicle industries and the public stating that the existing exemption had been difficult to apply, resulting in some RVs and PMRVs being manufactured in excess of the RV exemption's 400-square-foot threshold because of the addition of porches onto the chassis. As several commenters noted, this rule reflects broad consensus among stakeholders, regulators, and Congress that regulating RVs is outside the scope of HUD's housing mission and not contemplated by the National Manufactured Housing Construction and Safety Standards Act; and the revised rule allows for RVs and manufactured homes to be more readily distinguished. The rule does not incentivize public housing, nor is it an attempt to penalize individuals that pay lower or no property taxes. Rather than being directed at individuals, the rule is directed at manufacturers of manufactured housing and RVs.

Comment: Several industry commenters disagreed with HUD's inclusion of a Manufacturer's Notice as part of the RV exception. Some commenters stated their opposition to the Manufacturer's Notice requirement, noting, for example, that the MHCC did not recommend the Manufacturer's Notice, and that the RVIA certifies 95 percent of PMRVs and 98 percent of other RVs, requiring them to contain permanent seals of ANSI and NFPA certification respectively, with the same or similar information. Commenters stated that if HUD lacks regulatory authority over these classes of vehicles, then it should not prescribe or enforce the Manufacturer's Notice requirement, because it would lead to improper regulation beyond the scope of HUD's statutory authority.

Commenters stated that HUD should follow the example of state regulations and incorporate broader references to the ANSI and NFPA standards, e.g., "the latest edition of..." rather than specific editions, to avoid having to issue a new rule each time a standard is updated,

typically every three years. A commenter stated that HUD's reference to the ANSI standard in § 3282.15(b)(3) should be corrected to read: "...or ANSI A119.5-15, Park Model Recreational Vehicle Standard."

HUD Response: The Manufacturer's Notice requirement was not part of the recreational vehicle definition recommended by MHCC for purposes of revising the RV exemption. However, HUD added the notice requirement as a means of ensuring that consumers are aware of the distinctions among the products available to them on the market. This is especially true because products that qualify for the RV exemption from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations nevertheless still fall under HUD's statutory jurisdiction. HUD retains the reference to specific editions of the ANSI and NFPA standards because it must do so under the Federal Register's rules for incorporation by reference of publications, found at 1 CFR part 51. HUD corrects the reference to ANSI A119.5-15, Park Model Recreational Vehicle Standard in every place where it is mentioned.

HUD acknowledges that the Manufacturer's Notice prescribed by this final rule is similar in content to the one issued by RVIA to its PMRV members; however, it also emphasizes two distinctions. First, HUD's requirement for a Manufacturer's Notice applies to all RVs built and certified to the ANSI A119.5-15 standard and seeking an exemption from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations, not just RVs certified by RVIA. Additionally, HUD's Manufacturer's Notice, which is required to be placed more conspicuously than the RVIA seal or made available prior to the completion of the sales transaction, serves to inform consumers directly about the standard to which the prospective unit was built, and the purpose for which it was designed.

While the RVIA seal contains similar language, the purposes of the RVIA seal and the Notice are substantially different. RVIA's seal signifies a voluntary certification by an RVIA PMRV member to the ANSI A119.5 standard. The Manufacturer's Notice is specifically designed to ensure that consumers are aware to what standard and purpose their prospective units are built.

Comment: Many commenters stated that the rule will have a detrimental impact on various segments of the market, the economy, industry or consumers. Commenters stated that the rule would make it difficult for people to obtain loans or insurance for RVs. Commenters stated that the rule would drive up RV costs, because manufacturers would need to build them to higher standards for full-time living or obtain additional certifications. Commenters stated that the rule would permit manufacturers to create inferior products and disclaim them with the Manufacturer's Notice prescribed by the rule.

Commenters stated that by deterring full-time RV living, the rule would also have a negative impact on local economies and the United States and state and local tourist industries, particularly in warmer climates. Commenters similarly stated that the rule will have a detrimental impact on various segments of the market, the economy, industry or consumers, including manufacturers, the RV industry, RV parks, campgrounds. Commenters stated that the rule would force people to choose renting over home ownership, which would have the secondary effect of causing rent prices to increase.

HUD Response: As already stated, this rule allows manufacturers to choose the standard(s) to which they produce their products, so that their design intent is properly reflected in the information they provide to consumers, whether the product is manufactured housing designed as a primary residence or permanent dwelling and regulated under HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural

and Enforcement regulations, or is an RV designed for recreational use, and not as a primary residence or permanent dwelling and exempt from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations by way of its conformance to NFPA or ANSI standards. Because the rule has no impact on consumer use, the question of its impact on the economy, tourism, or the rental market is outside the scope of this rulemaking. The issues HUD seeks to clarify in publishing this rule are to: (1) identify which manufacturing standards apply to what structures; and (2) enhance consumer knowledge and confidence in their purchases.

Comment: Some commenters stated that the rule would lead state or local governments to adopt changes reflecting HUD's interpretation that RVs are not designed for full-time living, which would ultimately lead them to prohibit full-time RV living. Commenters stated that such entities often incorporate the language of HUD's rule, verbatim, into their laws and ordinances. Commenters stated that the rule will lead HUD and state or local jurisdictions to question the legality of other types of alternative structures, such as tree homes and container homes.

HUD Response: HUD has made it very clear, in this rulemaking and elsewhere, including the HUD website and program materials, that the intent of HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations, including the revised RV exemption under this rule, is to regulate the manufacture and installation of manufactured housing and to exempt RVs from such HUD regulation.

C. Comments in Response to HUD's Questions

1. Public Comments in Response to HUD's First Set of Questions

Comment: In response to HUD’s first set of questions,¹¹ commenters provided no specific evidence that the rule would result in additional costs to PMRV manufacturers. Commenters further stated that RVIA members produce nearly 95 percent of all PMRVs sold in the United States. Commenters stated that as a condition of membership, RVIA member manufacturers must agree to: (1) build units in compliance with ANSI A119.5; (2) self-certify compliance with ANSI A119.5; display RVIA’s ANSI compliance seal for PMRVs, which states “This park model RV is designed for temporary recreational, camping, or seasonal use. Manufacturer certifies compliance with park model RV standard—ANSI A119.5.” Commenters stated that RVIA conducts 6 or 7 unannounced annual compliance inspections at each member’s plant(s). Commenters stated that in 2015, 3,600 PMRV units were manufactured, and while approximately 180 of those may not meet the ANSI A119.5 standard, they nevertheless may still be in compliance, due to state and local building codes and campground regulations. Commenters stated that third-party agencies offer ANSI A119.5 inspections and seals to non-RVIA members and product liability laws strongly favor ANSI A119.5 compliance.

Commenters stated that HUD’s Office of Manufactured Housing is charged with regulating the manufactured housing industry, which provides permanent housing, and not the RV industry, which provides temporary accommodations for recreational and seasonal use. Commenters stated that if HUD were to regulate any RVs, it would waste scarce resources appropriated by Congress for the regulation of manufactured housing.

¹¹ What if any costs beyond the Notice requirements for recreational vehicle manufacturers seeking an ANSI A119.5 exception would be imposed on recreational vehicle manufacturers as a result of the implementation of this proposed rule? Are PMRVs that meet HUD’s statutory and regulatory definitions of “manufactured homes” currently being constructed outside the scope of ANSI A119.5? If so, how many units are being built? What would be the costs of requiring these manufacturers to build to ANSI A119.5 in order to take advantage of the exemption? Would it be more efficient and advantageous for HUD to exercise direct regulatory oversight over this portion of the industry? What would be the costs and benefits of doing so?

HUD Response: HUD appreciates these comments and believes that they support the final rule in its current form. Consistent with these comments, HUD has decided to clarify the definition of the RV exemption so that PMRVs may take advantage of a clearer and simpler RV exemption if they would otherwise technically fall within the statutory definition of manufactured home.

2. Public Comments in Response to HUD's Second Set of Questions

Comment: In response to HUD's second set of questions,¹² commenters stated that HUD should not require certification of RVs built to the NFPA 1192 standard in order to exempt them from HUD's manufactured housing standards. Commenters stated that RV trailer types built to the NFPA 1192 standard, including travel trailers, Fifth-wheels, and folding camping trailers, are vehicles and not manufactured homes. Commenters stated that vehicles should not need certification to escape classification by HUD as housing, especially since well-established law in all 50 states, and the U.S. Department of Transportation, already classify RVs as vehicles and not manufactured homes. Commenters stated that the Manufacturer's Notice requirement would be redundant, because RVIA members comprise 98 percent of the industry, and as a condition of membership, RVIA member manufacturers must agree to: (1) build units in compliance with NFPA 1192; (2) self-certify compliance with NFPA 1192. Commenters stated that most local and campground regulations require NFPA 1192 compliance.

HUD Response: HUD appreciates these responses and believes that they support the final rule in its current form. Consistent with these comments, HUD elects not to require a

¹² In what manner, if any, should HUD ensure that recreational vehicles conforming to NFPA 1192–2015 be certified to be exempt from the provisions of HUD's Manufactured Home Procedural and Enforcement Regulations? For example, should HUD require that a Notice of certification be provided in each such recreational vehicle built to NFPA 1192–15 similar to the Notice being proposed for PMRVs or should other methods be considered such as a label to be exempt from HUD's regulations?

Manufacturer's Notice for RVs to be exempted from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations on the grounds that they are built to the NFPA 1192-15 standard.

3. Public Comments in Response to HUD's Third Set of Questions

Comment: In response to HUD's third set of questions,¹³ commenters stated that HUD should not regulate Fifth-wheels or any other type of RV. Commenters stated that even deeming a Fifth-wheel camper "not for full-time occupancy" would be inappropriate, because Fifth-wheels are already regulated as vehicles and not as housing. Commenters stated that the National Highway Traffic Safety Administration (NHTSA), the U.S. Department of Transportation, and all 50 states define and regulate Fifth-wheel RVs as motor vehicles, regardless of how long people spend in them, and on the clear understanding that they are not permanent housing. Commenters stated that NHTSA, which administers the Federal Motor Vehicle Safety Standards (FMVSS), requires Fifth-wheel manufacturers to register as vehicle manufacturers, and subjects them to the same vehicle recall requirements as cars, trucks, and buses. Commenters stated that states require Fifth-wheel vehicles to comply with maximum vehicle dimensions, titling and registration requirements, taxation, tag statutes, and licensed vehicle manufacturers and dealer requirements. Commenters stated that since HUD last updated the RV definition for purposes of the exemption, most states have increased maximum vehicle widths to 8.5 feet and maximum lengths to more than 45 feet, yielding combination vehicle

¹³ As described in the preamble to this proposed rule, HUD has not exercised regulatory oversight over Fifth Wheel Recreational Vehicles that might meet the statutory and regulatory definitions of "manufactured home." This proposed rule proposes to except Fifth Wheel Recreational Vehicles from regulatory oversight. Should HUD take a different approach and begin exercising regulatory oversight of these units that meet the statutory and regulatory definitions of "manufactured home?" What are the costs and benefits of bringing these units within HUD oversight? Should HUD exercise any regulatory authority over Fifth Wheelers or other forms of recreational vehicles?

lengths of more than 65 feet. Commenters stated that Fifth-wheels do not become manufactured homes simply because industry created larger versions of them, nor because states increased the maximum allowable size of vehicles. Commenters stated that regulation of Fifth-wheel trailers or other classes of vehicles is clearly not a logical outgrowth of the proposed rule, because the proposed rule nowhere defines Fifth-wheel trailers; nor does it offer any justification or cost-benefit analysis relating to regulation of Fifth-wheel trailers as housing; nor does it describe or detail specific regulations that would apply to Fifth-wheel trailers; nor does it offer any rationale for treating Fifth-wheel trailers differently from other RVs. Commenters stated that if HUD were to regulate Fifth-wheel trailers, it would be an example of mission creep or “bait-and-switch.” One commenter, on the contrary, stated that Fifth-wheel trailers should be distinguished, because they are recreational camp trailers and not RVs.

HUD Response: HUD appreciates these responses and believes that they support the final rule in its current form. Consistent with these comments, HUD elects not to exercise direct regulatory oversight over Fifth-wheel trailers and instead to allow them to take advantage of a bright-line RV exemption if they would otherwise technically fall within the statutory definition of manufactured home.

D. Public Comments Offering Recommendations

Comment: Commenters stated that HUD should affirmatively state in the rule that it does not regulate RVs and revise the regulatory text and preamble to state that HUD’s definition of RV is for the express purpose of exempting RVs from manufactured home requirements and, in effect, any regulation by HUD. Commenters stated that HUD should make explicit that its Office of Manufactured Housing Programs has no authority to regulate consumer use of RVs. Commenters stated that HUD should affirmatively specify that RVs may be used as a primary

residence or for permanent occupancy. Commenters stated that HUD should specifically define RVs as permanent dwellings. Commenters stated that HUD should make explicit that the rule is not intended and should not be interpreted to involve HUD in the regulation of consumer use, particularly if HUD's intent is only to develop and enforce manufactured housing standards. Commenters stated that HUD should state that the rule cannot be used by any entity to impede people from living in small dwellings, whether RVs or not. A commenter stated that HUD should not regulate any structure that can hitch up to a pickup truck or be driven independently. Commenters stated that HUD should focus on the issue of RVs exceeding 400 square feet, e.g., by ensuring that patio roofs, screened-in porches, and other outdoor areas or slide-outs are not counted as living space or by increasing the RV exemption size to 460 square feet. Commenters stated that if HUD requires a sharper distinction between RVs and manufactured homes, it should clarify differences between foundations and leveling techniques, e.g., if a home has wheels, it should be classified as a vehicle, and if has a foundation, it should be classified as a manufactured home. Some commenters stated that dwelling classification should only be done by local authorities, and it should take into account differences in local climates. Some commenters stated that dwellings should be classified based on square footage per inhabitant. Some commenters stated that if the problem with RVs is poor construction, then HUD should set guidelines and conduct inspections, e.g., regulate the RV industry more, and not less.

Commenters stated that HUD should not include in the definition of "recreational vehicle" that it is a non-permanent dwelling or otherwise reference the duration a user dwells within an RV. Commenters stated that HUD should specifically strike from its RV definition at 24 CFR 3282.15(b)(2): subparagraph (2) in its entirety, or "...only for recreational use..." or "...Designed only for recreational use and not as a primary residence or for permanent

occupancy...”¹⁴ Commenters stated that HUD should clarify the rule’s effects on all structures, including RVs, mobile homes, mobile trailers, mobile tiny homes, and fixed tiny homes less than 400 square feet in size. Commenters stated that HUD should better distinguish PMRVs from other classes of RVs. Commenters stated that HUD should require PMRVs to meet standards rather than be exempted from them. Commenters stated that HUD should use frequency of moves, or movability, to distinguish RVs from manufactured housing. A commenter stated that HUD should specifically exempt RVs that remain stationary for seven or fewer consecutive months, regardless of whether an individual resides in them full-time.

HUD Response: As stated above, HUD takes the opportunity in this final rule to emphasize that while it possesses statutory authority to regulate the manufacture of certain RVs that meet the statutory definition of manufactured home, it nevertheless believes that exercising such authority is currently unnecessary. HUD believes that the non-permanent design intent of RVs favors that they be exempt from such regulation, even in cases where they fall within the statutory definition of “manufactured home.” Accordingly, HUD takes this opportunity to state that while it possesses statutory authority to regulate the manufacture of certain types of RV, it declines to do so by clarifying—and effectively broadening—the RV exemption and by requiring PMRV manufacturers claiming the exemption to notify consumers as to the standards their unit is built to, as well as the unit’s design and appropriate use. HUD also believes it would be inappropriate to use other criteria recommended by commenters, such as movability, to distinguish exempted RVs from regulated manufactured homes. Because ANSI A119.5-15 sets forth a maximum size of 400 square feet, excluding porches, size will continue to be a factor in defining the exemption for a Park Model RV. HUD reiterates that its goal is to establish a broad,

¹⁴ 24 CFR 3282.15(b) reads in part: “*Definition.* A Recreational Vehicle is: . . . (2) Designed only for recreational use and not as a primary residence or for permanent occupancy . . .”

easily applied exemption for purposes of its own regulatory activities. HUD maintains statutory jurisdiction over the manufacture and installation of all structures falling within the statutory definition of “manufactured home,” but it elects not to regulate all structures that qualify for the RV exemption. However, HUD’s OMHP will continue to regulate those structures that do not qualify for the RV exemption from HUD’s Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations. As stated above, HUD has no authority to dictate how its rule is used by other entities, including state and local governments, to formulate or interpret their own rules.

Comment: Some commenters recommended that HUD amend the definition of “recreational vehicle” in order to exempt recreational vehicles beyond those that are factory-built.

HUD Response: HUD appreciates these comments and upon further consideration agrees that some non-factory-built RVs should qualify for the exemption, if they were manufactured in non-factory facilities and still meet all of the remaining exemption requirements. Accordingly, HUD removes the term “factory built” from the definition of “recreational vehicle.”

Comment: Commenters stated that for accuracy and clarity, HUD should amend the definition of “recreational vehicle” by substituting the word “vehicle” for “vehicular structure,” on the grounds that states and municipalities classify RVs as vehicles--and RV manufacturers and dealers as “vehicle” manufacturers and dealers--for purposes of regulation and taxation.

HUD Response: HUD appreciates these comments and agrees that “vehicle” is an equally appropriate and widely-recognized term. Accordingly, HUD is including both the terms “vehicle” and “vehicular structure” in the definition of a “recreational vehicle.”

Comment: Commenters stated that HUD should make null and void existing manufactured housing regulations for snow load and roof slope.

HUD Response: This comment is beyond the scope of this rulemaking.

Comment: Commenters stated that it was unclear whether the rule applied only prospectively, or also retrospectively. Commenters stated that HUD should “grandfather” older products or have a delayed compliance date of two years after this rule’s publication.

HUD Response: Because this rulemaking only affects the manufacture of RVs, providing a clause “grandfathering” older products would have no effect. Similarly, because the only new requirement imposed by the rule is the inclusion of a printed Manufacturer’s Notice in certain units, HUD finds that there is no need for a delayed compliance date. As HUD states in the preamble, the Manufacturer’s Notice requirement under this rule applies to all covered units, beginning with the first unit to leave production on the 60-day effective date. This provides manufacturers with sufficient notice to identify which units require the Manufacturer’s Notice and include the Notice in those units prior to their leaving production.

Comment: Commenters stated that HUD should disclose all who participated in the formulation of the proposed rule.

HUD Response: As discussed above, HUD formulated its proposed rule based on a recommendation by the Manufactured Housing Consensus Committee (MHCC). MHCC members are appointed by the HUD Secretary based on selection procedures published by the American National Standards Institute (ANSI) or successor organization as modified by the Act. The MHCC has 21 members at any given time, with seven members in each of the following categories: (1) producers or retailers of manufactured housing; (2) users, representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are

residents of manufactured homes; and (3) general interest and public official members, three of whom must be public officials. All MHCC meetings are announced in the Federal Register and are open to the public. In this final rulemaking, HUD further takes into account public comment received on the proposed rule.

E. Public Comments Regarding Other Issues

“Tiny home,” while not formally defined, generally refers to a type of home that is compact (usually below 400 square feet), on wheels, and intended for permanent residence. These tiny homes are gaining popularity even though most are built by do-it-yourself builders and do not conform to any established building code or construction standard for safety. The majority of these homes are built and occupied in ways that do not meet construction standards for recreational vehicles (RVs), which are designed for use as temporary living quarters for non-commercial, recreational and/or camping use. They also do not meet construction standards for a manufactured home, which is a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure “except that such terms shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this title.” 42 U.S.C. Section 5402(6). Sizes of tiny homes can range from around 80–500 square feet in floor area.

Comment: Commenters stated that HUD should investigate and support the burgeoning “tiny home” movement, especially as a potential solution to the problem of homelessness. Commenters stated that tiny homes should not be classified as RVs, and HUD should better distinguish tiny homes from RVs. Commenters stated that HUD should set standards for or regulate tiny homes, even if they fall outside the current scope of regulation for manufactured housing or do not fall within the RV exemption. Commenters stated that HUD should define tiny homes as permanent dwellings. Commenters stated that HUD should regulate tiny homes as manufactured housing. Commenters stated that MHCC should define tiny homes as manufactured homes.

One commenter stated that HUD should broaden the definition of manufactured housing to include tiny homes, including those that are under 400 square feet, those that are built by manufacturers, and those that are built by so-called “do-it-your-selves,” assuming that they meet or exceed ANSI standards, other than square footage, and are built on a trailer frame, a foundation, a boat, or piers. Commenters stated that such tiny homes are fit for year-round use, and should be recognized as such, particularly if they are insulated and include heating and cooling systems. Commenters stated that HUD regulation of tiny homes would make it easier for states and municipalities to recognize tiny homes as legitimate year-round, permanent dwellings, and it would make it easier for tiny house owners to obtain insurance policies.

Commenters stated that there are currently no safety, construction, or energy efficiency standards specifically and uniformly being applied to tiny homes. Commenters stated that the National Organization of Alternative Housing (NOAH) already encourages the tiny home industry to self-regulate using various standards, e.g., National Highway Traffic Safety Administration (NHTSA), NFPA 1192-2015, NFPA 70/National Electrical Code (NEC), and

American Tiny House Association (ATHA). Commenters stated that tiny homes are designed more for full-time or permanent living than RVs, that they are often built to code with durable materials, that they typically exceed RV standards like ANSI and NFPA, that they are typically smaller than manufactured homes, e.g., less than 250 square feet, and that they have their own standards. One commenter cited to NOAH as one viable standard. Commenters stated that cities like Austin, Texas, Nashville, Tennessee, Olympia, Washington, Ithaca, New York, and Portland, Oregon, use tiny homes as an important tool to combat homelessness, e.g., by establishing tiny home shelters.

A commenter stated that HUD should create a new and separate exemption for tiny homes, to define them in a fashion similar to the definition of RV under the prior exemption at 24 CFR 3282.8; e.g., with a maximum dimension of between 240 and 320 square feet, built on a single chassis, and permanently towable by a light-duty truck. The commenter stated that most tiny homes are no larger than 28 by 8 feet and built on a single chassis. The commenter stated that this exemption would not apply to larger PMRVs, but it would provide a safe harbor for innovation. The commenter stated that the proposed rule's reliance on permanent versus recreational design intent is unnecessarily vague and discourages the use of energy-efficient insulation.

HUD Response: As stated above, HUD currently regulates as manufactured housing only those structures that are built on a permanent chassis and that “in traveling mode, [are] eight body feet or more in width or forty body feet or more in length or, when erected on site, [are] three hundred twenty or more square feet.” Accordingly, HUD lacks jurisdiction to regulate any tiny home that is less than eight body feet in width, 40 body feet in length, or 320 square feet, or any tiny home that is built on a foundation without a permanent chassis. While this statutorily

precludes HUD from regulating many tiny homes, manufacturers can voluntarily opt-in to regulation by HUD (See 42 U.S.C. 5402(6)).

That said, HUD is considering whether it should develop Federal Manufactured Home Construction and Safety Standards to allow manufactured homes with reduced dimensions and design requirements to be built to a national preemptive HUD standard. Additionally, the International Code Council (ICC) has recently considered a “tiny house appendix,” which is incorporated into the 2018 International Residential Code. HUD will consider other appropriate measures, including potential rulemaking related to tiny homes, as it receives new information.

Comment: Many commenters stated their concern that the rule could have negative consequences for the tiny home community. Commenters stated that the rule would have the effect of banning tiny homes. Commenters stated that HUD should not regulate tiny homes at all. Commenters stated that by requiring compliance with either ANSI/NFPA standards or HUD’s Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations, HUD would extinguish the community of small-scale hobbyist and small-business builders of tiny homes, which would in turn kill innovation in construction and manufacturing—particularly given that the exemption as stated in the proposed rule only applies to factory-built structures. Commenters stated that by restricting the tiny home movement, the rule would allow other countries to gain tiny home advantages over the United States.

HUD Response: As already discussed, it is neither HUD’s intention nor goal with this rule to regulate temporary, recreational structures in the form of RVs. At the same time, HUD is cognizant of the increased popularity of so-called “tiny homes,” many of which are purported to be built to the ANSI A119.5 Park Model Recreational Vehicle standard. HUD believes that

consumers should be fully aware of the construction standard used to build a particular product at the time of purchase. If a tiny home is a “manufactured home” as defined by statute, then it can be regulated as manufactured housing, unless it also falls within HUD’s regulatory exemption for recreational vehicles as provided by this final rule. If a tiny home is not a “manufactured home” as defined by statute, then HUD does not have authority to regulate its construction under its Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations. It is also important that the general public be aware that HUD regulates manufacturers of manufactured homes, as defined by statute.

VI. Incorporation by Reference

This rulemaking incorporates by reference ANSI A119.5-15 and NFPA 1192-15 consensus standards for Recreational Vehicles. The Recreation Vehicle Industry Association (RVIA) sponsors and is accredited to manage the ANSI A119.5 Park Model Recreational Vehicle Standard, which is designed specifically for PMRVs. According to the RVIA, “[m]embers of the engineering profession and others associated with the design, manufacture, and inspection of Park Model Recreational Vehicles have been aware of the need for a standard providing for healthful and safe, portable, seasonal housing, arranged and equipped to assure suitable living conditions. They have also recognized that because of conditions of transport, size, and use, existing standards for permanent buildings and recreational vehicles are not completely applicable to Park Model RVs. It is with these factors in mind that this standard has been developed.”¹⁵ Specifically, the ANSI A119.5-15 standard covers fire and life safety criteria

¹⁵ See RVIA, Standard for Park Model Recreational Vehicles, <http://www.rvia.org/UniPop.cfm?v=2&OID=6772&CC=7040>.

and plumbing for PMRVs considered necessary to provide a reasonable level of protection from loss of life from fire and explosion.

The National Fire Protection Association (NFPA) develops and maintains the NFPA 1192 Standard on Recreational Vehicles. According to NFPA, “Those members of the engineering profession and others associated with the design, manufacturing, and inspection of recreational vehicles have been aware of the need for uniform technical standards leading to the proper use of this special type of equipment. They also have recognized that, because of conditions of transport, size, and use, existing standards for motor vehicles or permanent buildings are not completely applicable to recreational vehicles.”¹⁶ The NFPA 1192-15 standard provides the minimum construction standards considered necessary to protect against loss of life from fire and explosion for non-Park Model Recreational Vehicles.

Incorporated standards have the same force and effect as 24 CFR part 3282, except that whenever reference standards and 24 CFR part 3282 are inconsistent, the requirements of 24 CFR part 3282 prevail to the extent of the inconsistency. The Department will enforce the listed editions of incorporated material. Where two or more incorporated standards are equivalent in application, the manufacturer may use either standard.

HUD has worked with both organizations to ensure that both ANSI A119.5-15 and NFPA 1192-15 are available via read-only, electronic access. NFPA 1192-15 is available at <http://www.nfpa.org/freeaccess>. ANSI A119.5-15 is available for review at www.rvia.org/?ESID=A119. Additionally, interested parties have access to the standards through their normal course of business.

VII. Findings and Certifications

¹⁶ See <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards?mode=code&code=1192>.

Executive Order 12866 and Executive Order 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and was formally reviewed by the OMB. This rule revises the definition of recreational vehicle to clarify the types of recreational vehicles exempted from 24 CFR parts 3280 and 3282. In the past, both consumers and manufacturers of recreational vehicles have questioned whether certain recreational vehicles are subject to HUD's Construction and Safety Standards, codified in 24 CFR part 3280 (the HUD Code), and HUD's Manufactured Home Procedural and Enforcement regulations, codified in 24 CFR part 3282. This rule will provide that a recreational vehicle is exempted from HUD's Manufactured Home Construction and Safety Standards and its Manufactured Home Procedural and Enforcement regulations if the unit is built in conformance with either NFPA 1192-15, Standard on Recreational Vehicles, or ANSI A119.5-15, Park Model Recreational Vehicle Standard.

Executive Order 13771 and Executive Order 13777

Under the leadership of Secretary Carson, HUD has undertaken an effort, consistent with Executive Order 13771 (82 FR 9339), entitled “Reducing Regulation and Controlling Regulatory Costs,” to identify and eliminate or streamline regulations that are wasteful, inefficient or unnecessary. In furtherance of this objective, the Secretary has also led HUD’s implementation of Executive Order 13777 (82 FR 12285), entitled “Enforcing the Regulatory Reform Agenda.” Executive Order 13777 reaffirms the rulemaking principles of Executive Order 13771 by directing each agency to establish a Regulatory Reform Task Force to evaluate existing regulations to identify those that merit repeal, replacement, modification, are outdated, unnecessary, or are ineffective, eliminate or inhibit job creation, impose costs that exceed benefits, or derive from or implement Executive Orders that have been rescinded or significantly modified. This final rule is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis.

Summary of Benefits and Costs of Final Rule

Exemption Criteria

Under this rule, self-propelled RVs qualify for the RV exemption, insofar as they meet all three RV exemption criteria by definition. For towable RVs, however, the standard for the RV exemption is clarified to provide that the RV must be designed, built, and certified in accordance with one of two national standards: NFPA 1192-15, Standard for Recreational Vehicles; or ANSI A119.5-15, Park Model Recreational Vehicle Standard. These standards are already being used by the Recreation Vehicle Industry Association (RVIA) in its standards, inspection, and self-certification process. HUD concludes that the exemption criteria for towable RVs impose negligible costs on the market of RV manufacturers and consumers.

As far as benefits of the new exemption criteria on the market are concerned, the rule provides regulatory clarity to both RV manufacturers and consumers. HUD's Office of Manufactured Housing receives approximately 4–6 complaints per year on the topic of RVs. In reviewing these complaints, HUD has determined that some come from manufacturers questioning whether a competitor's RV product is exempt from HUD's manufactured housing regulations. These manufacturers may be unsure of the scope of the exemption and feel that the RV in question meets the statutory definition of manufactured housing and does not satisfy the existing RV exemption. Complaints also have been submitted by consumers, who experience difficulty in determining whether their RVs meet the statutory definition of manufactured housing and are suitable for full-time living. This final rule provides both manufacturers and consumers additional clarity to make informed decisions without additional help from HUD.

Manufacturer's Notice

The Manufacturer's Notice, required for an ANSI-certified PMRVs to be exempt from HUD manufactured housing regulation, imposes a negligible or nonexistent burden on industry and provides informational benefit to consumers. RVIA already requires a seal to be affixed to PMRVs meeting the ANSI standard. RVIA's own statement in support of this rule indicates that there will be no additional cost as a result of this notice. RVIA's current seal does not satisfy HUD's standard for the Manufacturer's Notice, however, which provides specific requirements regarding the content and prominence of the notice and which requires the notice to be prominently displayed in the unit and delivered to the consumer before the sale transaction is complete, regardless of whether the transaction occurs online or in person.

Nevertheless, HUD's Manufacturer's Notice requirement is not burdensome. A PMRV manufacturer could satisfy this requirement with at most two printed sheets of paper per PMRV:

one in the kitchen, and one delivered to the consumer before the transaction. These sheets could be identical for every PMRV and would not need to be modified between sales. In the case of an online transaction, the seller could deliver the notice to the purchaser by email or include the notice as a document in the transaction process and leave the notice in the kitchen.

RVIA data show that about 4,000 PMRVs are sold each year by 22 manufacturers. The costs of ensuring that a notice is printed, included within a sales packet, and left in the PMRV kitchen are negligible. A simple calculation is that 22 quality managers, one at each PMRV manufacturer, will prepare a manufacturer's notice and include it in their manufacturer information and sales packet, spending up to one hour in the process. A Bureau of Labor Statistics estimate for a quality manager (Managers – All other) mean wage is \$54.41 as of May 2017. A loaded wage may be double that. In this scenario, 22 quality managers might incur a cost of \$2,394, if this task took them a full hour each year. Printing 8,000 sheets of paper at \$0.10 each, a conservative estimate, would yield an additional cost of \$800.

Conclusion

This rule can be considered deregulatory, as it imposes only de minimis new costs and creates potential cost savings for consumers and manufacturers by providing additional clarity to inform production and purchasing of RVs. In practice, HUD has not exercised regulatory oversight over RV manufacturers and only seeks to update its regulations to conform to its existing practices. The new exemption criteria are less exacting than the existing criteria, and possibly than industry self-regulation as well. The requirement for a Manufacturer's Notice in the case of PMRVs comes at negligible cost, estimated conservatively at less than \$4,000 per year for the entire RV industry. This cost will be easily outweighed by the regulatory clarity that the exemption provides to the RV industry and consumers.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is intended to clarify and effectively expand the RV exemption and ensure that RV manufacturers have a clear understanding of which units qualify to be exempt. In addition to benefiting the consumer by providing clarity regarding the manufactured housing standards used to construct the unit, this rule would reduce the paperwork burden and costs of construction delays on RV manufacturers.

As noted above, there are 22 manufacturers. The small business size standard is 1,000 employees for NAICS Code 336211. Pursuant to the small business size standard, 14 of the 22 manufacturers are small. The final rule would apply to all of them. However, the economic impact will not be significant. This rule's notice requirement, the Manufacturer's Notice in question, may be produced and displayed within a unit at \$1.00 expense for each unit to the manufacturer. The average small business will need to prepare an estimated 300 notices per year. As such, a small business may incur \$150 in additional costs. Easing the process for RV certification assists manufacturers, while the Manufacturer's Notice requirement supports achievement of the goal of ensuring a clear distinction between RV structures and residential manufactured housing. Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502-NEW. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

In its proposed rule, HUD estimated the burden of information collection in the rule and solicited public comments on that estimate. HUD received several public comments regarding the information collection estimate. One comment stated that HUD's proposed information collection was accurate and necessary to carry out the purposes of the proposed rule. Several others, as part of a letter writing campaign, stated that HUD's proposed collection would not enhance the quality, utility and clarity of the information to be collected. HUD considered the comments and concludes that the Manufacturer's Notice provides important information to prospective purchasers of Park Model RVs that may otherwise be uninformed about the design of Park Model RVs for recreational use and temporary occupancy. HUD did not receive any comments from OMB. In this final rule, HUD is updating its information collection analysis based on current RV industry data. Specifically, HUD has confirmed that the number of RV manufacturers that build and ship Park Model RV's, in accordance with ANSI-A119.5-15, total

approximately 22 manufacturers. HUD has also updated the burden estimate necessary for each affected manufacturer to provide 2 copies of the manufacturer's notice (see § 3282.15(c)).

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That FONSI remains applicable to this final rule and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-402-3055 (this is not a toll-free number).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

The Catalog of Federal Domestic Assistance number for the Manufactured Housing Program is 14.171.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Incorporation by reference, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends part 3282 of Title 24 of the Code of Federal Regulations, as follows:

**PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT
REGULATIONS**

1. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461; 42 U.S.C. 3535(d), 5403, and 5424.

§ 3282.8 [Amended]

2. In § 3282.8, remove and reserve paragraph (g).

3. Add § 3282.15 to subpart A to read as follows:

§ 3282.15 Exemption for recreational vehicles

(a) *Exemption.* A recreational vehicle that meets the requirements of this section is exempt from 24 CFR parts 3280 and 3282.

(b) *Definition.* A recreational vehicle is:

(1) A vehicle or vehicular structure not certified as a manufactured home;

(2) Designed only for recreational use and not as a primary residence or for permanent occupancy; and is either:

(i) Built and certified in accordance with either NFPA 1192 (incorporated by reference, see § 3282.16) or ANSI A119.5 (incorporated by reference, see § 3282.16) as provided by paragraph (c) of this section; or

(ii) Any vehicle which is self-propelled.

(c) *Notice and certification requirements.* In order for the exemption to apply to an ANSI A119.5-15 certified recreational vehicle, a Manufacturer's Notice must be delivered to the consumer prior to the completion of the sales transaction. The Manufacturer's Notice must also be prominently displayed in a temporary manner in the kitchen (*i.e.*, countertop or exposed cabinet face). The Manufacturer's Notice must meet the following requirements:

(1) *Title of Manufacturer's Notice.* The title of the Manufacturer's Notice shall be “*****MANUFACTURER’S NOTICE*****” which shall be legible and typed using bold letters at least 1 inch in size.

(2) *Content of Notice.* The content of the Manufacturer's Notice text shall be as follows:

The Manufacturer of this unit certifies that it is a Park Model Recreational Vehicle designed only for recreational use, and not for use as a primary residence or for permanent occupancy. The manufacturer of this unit further certifies that this unit has been built in accordance with the ANSI A119.5-15 consensus standard for Park Model Recreational Vehicles.

(3) *Text of Notice.* The text of the Manufacturer's Notice, aside from the Manufacturer's Notice's title shall be legible and typed using letters at least 1/2 inch in size.

(4) *Removal of Manufacturer's Notice.* The Manufacturer's Notice shall not be removed by any party until the entire sales transaction has been completed.

(5) *Completion of sales transaction.* A sales transaction with a Park Model Recreational Vehicle purchaser is considered completed when all the goods and services that the dealer agreed to provide at the time the contract was formed have been provided. Completion of a retail sale will be at the time the dealer completes installation of the Park Model Recreational Vehicle, if

the dealer has agreed to provide the installation, or at the time the dealer delivers the recreational vehicle to a transporter, if the dealer has not agreed to transport or install the Park Model Recreational Vehicle. The sale is also complete upon delivery to the site if the dealer has not agreed to provide installation as completion of sale.

4. Add § 3282.16 to subpart A to read as follows:

§ 3282.16 Incorporation by reference

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Department must publish a document in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Office of Manufactured Housing Programs, Manufactured Housing and Construction Standards Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room B-133, Washington, DC 20410, 202-402-5216, and is available from the sources listed below. Copies of incorporated standards that are not available from their producer organizations may be obtained from the Office of Manufactured Housing Programs. These standards are also available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, telephone number 800-344-3555, web site <http://www.nfpa.org>.

(1) NFPA 1192, Standard on Recreational Vehicles, 2015 Edition, issued August 14, 2014, IBR approved for § 3282.15(b).

(2) [Reserved]

(c) Recreational Vehicle Industry Association (RVIA), 1896 Preston White Drive, Reston, VA 20191, telephone number 703-620-6003, web site <http://www.rvia.org>.

(1) ANSI A119.5: Park Model Recreational Vehicle Standard, 2015 Edition, ANSI-approved April 7, 2015, IBR approved for § 3282.15(b).

(2) [Reserved]

Dated: November 8, 2018

Brian D. Montgomery
Assistant Secretary for Housing –
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